



General Assembly

January Session, 2009

Amendment

LCO No. 7313

HB0651607313HR0

Offered by:

REP. BACCHIOCHI, 52nd Dist.

REP. CANDELORA, 86th Dist.

To: Subst. House Bill No. **6516**

File No. 229

Cal. No. 197

"AN ACT ESTABLISHING MINIMUM RETAIL REFUND AND EXCHANGE POLICIES."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. (NEW) (*Effective January 1, 2010*) (a) There is hereby
4 established the Connecticut Retail Refund and Exchange Adjudication
5 Office, hereinafter referred to as the "office", which shall be housed for
6 administrative purposes only in the Department of Consumer
7 Protection.

8 (b) The Department of Consumer Protection shall provide an
9 independent arbitration procedure, within the Connecticut Retail
10 Refund and Exchange Adjudication Office, for the settlement of
11 disputes between consumers and persons engaged in trade or
12 commerce who maintain a physical retail location in this state caused
13 by the retail refund and exchange policies law. The commissioner shall
14 establish one or more retail refund and exchange dispute settlement

15 panels which shall consist of a neutral arbitrator appointed by the
16 Commissioner of Consumer Protection. The Commissioner of
17 Consumer Protection shall appoint as arbitrators individuals who shall
18 not be employees or independent contractors with any business
19 involved in the retail sale of items in trade or commerce. The arbitrator
20 shall be a member of an arbitration organization and shall serve with
21 compensation. The Department of Consumer Protection may refer an
22 arbitration dispute to the American Arbitration Association or other
23 arbitration organization in accordance with regulations adopted in
24 accordance with the provisions of chapter 54 of the general statutes,
25 provided such organization and any arbitrators appointed by such
26 organization to hear cases shall not be affiliated with any retailer or
27 consumer organization.

28 (c) If any consumer item purchased at any time on or after January
29 1, 2010, fails to conform to such applicable retail refund and exchange
30 policies as defined in this act, a consumer may bring a grievance to an
31 arbitrator. The consumer may initiate a request for arbitration by
32 calling a toll-free telephone number designated by the commissioner
33 or by requesting an arbitration hearing in writing. The consumer shall
34 file, on forms prescribed by the commissioner, any information
35 deemed relevant to the resolution of the dispute and shall return the
36 form accompanied by a filing fee of fifty dollars. Prior to submitting
37 the complaint to an arbitrator, the Department of Consumer Protection
38 shall conduct an initial review of the complaint. Upon acceptance of
39 the complaint, the commissioner shall notify the retailer of the filing of
40 a request for arbitration and shall obtain from the retailer, in writing,
41 on a form prescribed by the commissioner, any information deemed
42 relevant to the resolution of the dispute. The retailer shall return the
43 form within fifteen days of receipt, together with a filing fee of two
44 hundred fifty dollars. Upon written agreement of the parties, signed
45 after the consumer has initiated a request for arbitration, the case may
46 be presented to the arbitrator solely based on the written documents
47 submitted by such parties. A retailer who brings a grievance to an
48 arbitrator under this section shall, upon filing the complaint form

49 provided for in this section, provide the consumer with notice by
50 registered or certified mail, return receipt requested.

51 (d) Initial determinations to reject a complaint for arbitration shall
52 be submitted to an arbitrator for a final decision upon receipt of a
53 written request from the consumer for a review of the initial eligibility
54 determination and a filing fee of fifty dollars. If a complaint is accepted
55 for arbitration, an arbitrator may determine that a complaint does not
56 allege that the retailer has failed to comply with this act at any time
57 before such arbitrator renders its decision on the merits of the dispute.
58 The fee accompanying the consumer's complaint form shall be
59 refunded to the consumer and the fee accompanying the form filed by
60 the retailer shall be refunded to the retailer if the arbitrator determines
61 that a complaint does not allege a violation of the provisions of this
62 section.

63 (e) The Department of Consumer Protection shall investigate, gather
64 and organize all information necessary for a fair and timely decision in
65 each dispute. The commissioner may issue subpoenas on behalf of any
66 arbitrator to compel the attendance of witnesses and the production of
67 documents, papers and records relevant to the dispute. The
68 department shall forward a copy of all written testimony, including all
69 documentary evidence, to an independent technical expert certified by
70 the National Retail Federation or having a degree or other credentials
71 from a nationally recognized organization or institution attesting to
72 retailing or refund exchange expertise, who shall review such material
73 and be available to advise and consult with the arbitrator. An expert
74 shall sit as a nonvoting member of an arbitration panel whenever oral
75 testimony is presented. Such experts may be recommended by the
76 Commissioner of Consumer Protection at the request of either party to
77 the arbitration. An arbitrator shall, as expeditiously as possible, but not
78 later than sixty days after the time the consumer files the complaint
79 form together with the filing fee, render a fair decision based on the
80 information gathered and disclose his or her findings and the reasons
81 therefor to the parties involved. The failure of the arbitrator to render a
82 decision within sixty days shall not void any subsequent decision or

83 otherwise limit the powers of the arbitrator. The arbitrator shall base
84 his or her determination of liability solely on whether the retailer has
85 failed to comply with this act. The arbitration decision shall be final
86 and binding as to the rights of the parties, subject only to judicial
87 review as set forth in this subsection. The decision shall provide
88 appropriate remedies, including, but not limited to, one or more of the
89 following:

90 (1) Replacement of the consumer item with an identical or
91 comparable new item acceptable to the consumer;

92 (2) Refund of the full purchase price, plus collateral charges;

93 (3) Reimbursement for expenses and compensation for incidental
94 damages; and

95 (4) The decision of the arbitrator shall specify a date for performance
96 and completion of all awarded remedies.

97 (f) Notwithstanding any provision of the general statutes or any
98 regulation to the contrary, the Department of Consumer Protection
99 shall not amend, reverse, rescind or revoke any decision or action of an
100 arbitrator. The department shall contact the consumer, within ten
101 working days after the date for performance, to determine whether
102 performance has occurred. The retailer shall act in good faith in
103 abiding by any arbitration decision. In addition, either party to the
104 arbitration may make application to the superior court for the judicial
105 district in which one of the parties resides or, when the court is not in
106 session, any judge thereof for an order confirming, vacating,
107 modifying or correcting any award, in accordance with the provisions
108 of this section and sections 52-417, 52-418, 52-419 and 52-420 of the
109 general statutes. Upon filing such application, the moving party shall
110 mail a copy of the application to the Attorney General and, upon entry
111 of any judgment or decree, shall mail a copy of such judgment or
112 decree to the Attorney General. A review of such application shall be
113 confined to the record of the proceedings before the arbitrator. The
114 court shall conduct a de novo review of the questions of law raised in

115 the application. In addition to the grounds set forth in sections 52-418
116 and 52-419 of the general statutes, the court shall consider questions of
117 fact raised in the application. In reviewing questions of fact, the court
118 shall uphold the award unless it determines that the factual findings of
119 the arbitrator are not supported by substantial evidence in the record
120 and that the substantial rights of the moving party have been
121 prejudiced. If the arbitrator fails to state findings or reasons for the
122 award, or the stated findings or reasons are inadequate, the court shall
123 search the record to determine whether a basis exists to uphold the
124 award. If it is determined by the court that the retailer has acted
125 without good cause in bringing an appeal of an award, the court, in its
126 discretion, may grant to the consumer his costs and reasonable
127 attorney's fees. If the retailer fails to perform all awarded remedies by
128 the date for performance specified by the arbitrator, and the
129 enforcement of the award has not been stayed pursuant to subsection
130 (c) of section 52-420 of the general statutes, then each additional day
131 the retailer wilfully fails to comply shall be deemed a separate
132 violation.

133 (g) The department shall maintain such records of each dispute as
134 the commissioner may require, including an index of disputes by
135 retailer name. The department shall annually compile and maintain
136 statistics indicating the record of retailer compliance with arbitration
137 decisions and the number of refunds or replacements awarded. A copy
138 of the statistical summary shall be filed with the Commissioner of
139 Consumer Protection and the summary shall be a public record.

140 (h) The Commissioner of Consumer Protection shall adopt
141 regulations, in accordance with the provisions of chapter 54 of the
142 general statutes, to carry out the purposes of this section. Written
143 copies of the regulations and appropriate arbitration hearing
144 procedures shall be provided to any person upon request."